

46 Am. Jur. 2d Judges § 5

American Jurisprudence, Second Edition | February 2022 Update

Judges

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II. Qualification and Selection

§ 5. Eligibility of person to be judge, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  3, 4, 5

The rules governing the selection and tenure of public officers, generally,¹ apply to judges in the absence of any provision to the contrary; requirements with respect to eligibility for the office of judge are usually prescribed by the constitution or statutes of the various states, and generally any person may be selected for the office who comes within the prescribed qualifications.² The Due Process Clause of the Fourteenth Amendment establishes a constitutional floor, not a uniform standard, regarding qualifications of judges, and thus most questions concerning a judge's qualifications to hear a case are not constitutional ones but, rather, are answered by common law, statute, or professional standards of bench and bar.³ A statute prescribing additional qualifications to hold a judicial position is constitutional so long as it does not interfere with or nullify the constitutionally prescribed qualifications.⁴ For example, the legislature may require that a judge take and pass an examination,⁵ so long as such requirement is consistent with constitutional provisions.⁶

Intent, as a factor in determining if judges have complied with the constitutional requirement that they reside in the district from which they are elected, can be demonstrated in many ways, including but not limited to physical presence, and the Supreme Court considers physical presence to the extent that it manifests intent to reside in the district.⁷

Where a constitutional amendment prescribing additional qualifications to hold a judicial position is adopted by the electorate at the same time that a person is elected to judicial office, that person must, at the time the person is to take office, meet the qualifications required by the constitutional amendment; the fact that the person was eligible at the time the person's name was placed on the ballot does not make the person qualified to assume judicial office.⁸

Observation:

The Ex parte Young exception, which allowed federal suits to go forward against state officers for prospective equitable relief from ongoing violations of federal law despite the Eleventh Amendment jurisdictional bar, did not apply to a lawsuit brought by a justice of a state supreme court against other justices of the state supreme court claiming that the amendment of a rule governing the election of the chief justice unlawfully precluded the justice from attaining the position, since even though the old rule provided for the elevation of the vice-chief justice, the plaintiff had not been reelected to the position of vice-chief justice, and thus the prospective relief sought could not be provided by reinstating the old rule.⁹

CUMULATIVE SUPPLEMENT

Cases:

Judicial candidate who did not belong to political party had prudential standing to challenge provision of Delaware Constitution that limited service on state's supreme court, superior court, and chancery court to members of state's two major political parties, even though provision addressed matter of concern to many of state's residents, where there was no indication that candidate's reasons for why he was political independent and why he was interested in judicial position were not genuine. [Del. Const. art. 4, § 3](#). [Adams v. Governor of Delaware](#), 922 F.3d 166 (3d Cir. 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Am. Jur. 2d, Public Officers and Employees §§ 83 to 120.](#)
- 2 [Chowning v. Magness](#), 792 S.W.2d 438 (Mo. Ct. App. S.D. 1990); [State ex rel. Martin v. Preston](#), 325 N.C. 438, 385 S.E.2d 473 (1989).
As to the various restrictions and limitations imposed upon judges once judicial office has been attained, see §§ 42 to 49.
- 3 [Bracy v. Gramley](#), 520 U.S. 899, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997).
- 4 [LaFever v. Ware](#), 211 Tenn. 393, 365 S.W.2d 44 (1963).
As to statutory or constitutional provisions requiring status as an attorney as a qualification to hold a judicial office, see § 6.
- 5 [Sinclair v. Schroeder](#), 225 Kan. 3, 586 P.2d 683 (1978).
- 6 [Clayton v. Kiffmeyer](#), 688 N.W.2d 117 (Minn. 2004).
- 7 [In re Conduct of Pendleton](#), 870 N.W.2d 367 (Minn. 2015).
- 8 [In re Advisory Opinion to the Governor](#), 192 So. 2d 757 (Fla. 1966).
- 9 [Opala v. Watt](#), 454 F.3d 1154 (10th Cir. 2006).

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